

ST 01-0021-GIL 01/31/2001 SERVICE OCCUPATION TAX

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

January 31, 2001

Dear Xxxxx:

This letter is in response to your letter dated December 4, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am a Certified Public Accountant for BUSINESS involved in the printing brokerage industry (the Company). The Company is requesting a letter ruling pursuant to 86 Ill. Admin Code Ch. I, Sec 130 with respect to issues related to the following:

FACTS

- 1) The Company is in the business of brokering printed products for sale to its customers.
2. The Company only has one location located in the state of Illinois.
- 3) The cost ratio for the Company's sales is less than 75%.
- 4) The Company brokers both custom/personalized printed products and stock printed products. For the custom/personalized printed products, the Company charges Service Occupation Tax on 50% of the total charge and for stock printed products the Company charges Retailers Occupation Tax on 100% of the total charge.
- 5) The Company recently has been engaged in a special project. The Company takes customer supplied electronic data processing punch cards, scans the card and makes an electronic image for downloading onto the customer system. Occasionally the Company will download the image on to a compact disk for the customer. The Company will pay Retailers Occupation Tax upon the purchase of the compact disk.

QUESTIONS

- 1) Under the facts described above, what is the appropriate way for the Company to display the tax on 50% of the total charge for the custom/personalized printed products.
- 2) Under the facts described above, is the Company required to collect Service Occupation Tax for the services of scanning the punch cards.

The Company wishes to comply with the tax laws of this State. We would appreciate a letter ruling regarding the questions above. If you have any questions or need any further clarification, I can be reached at #####. Thank you for your help in this matter.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax. See also 86 Ill. Adm. Code 130.1995.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Generally, special order printers calculate their tax base utilizing either the third or fourth method. The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the

Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The fourth method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Persons who electronically extract information and transfer such information to customers in a tangible format, such as on tape or disk, incur either a Retailers' Occupation Tax or a Service Occupation Tax liability, depending on whether the item is customized. When you sell an item standard enough to be stocked for sale to the public generally, i.e., one that is not customized to the specifications of a particular purchaser, the entire charge for the product is subject to Retailers' Occupation Tax. If the item, however, were customized for a particular purchaser, it would be subject to the Service Occupation Tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.